

November 20, 2007

E-19J

Robert F. Tally, Jr., Division Administrator
Federal Highway Administration - Indiana Division
575 North Pennsylvania St., Room 254
Indianapolis, IN 46204

Karl B. Browning, Commissioner
Indiana Department of Transportation
100 North Senate Ave., Room N642
Indianapolis, Indiana 46204

**RE: I-69 Evansville to Indianapolis, Tier 2 Final Environmental Impact
Statement for Section 1: Evansville to Oakland City. CEQ No. 20070446**

Dear Mr. Tally and Mr. Browning:

I am writing to provide the U.S. Environmental Protection Agency's (U.S. EPA) comments on the above referenced I-69 Section 1 Tier 2 Final Environmental Impact Statement (FEIS) under the National Environmental Policy Act (NEPA), and Section 309 of the Clean Air Act.

The Section 1 Tier 2 EIS is the first of six Tier 2 EISs submitted for our review for the Federal Highway Administration (FHWA) and the Indiana Department of Transportation's (INDOT) proposed 142-mile-long I-69 (Evansville to Indianapolis) project. I-69 is currently proposed as a freeway facility that utilizes interchanges for access control. The Section 1 Tier 2 FEIS sets a standard for the type and level of information and analysis that FHWA and INDOT will utilize for the next five I-69 Tier 2 EISs.

Section 1 is the southern most section and is approximately 13 miles in length. The Section 1 Tier 2 FEIS continues to identify the DEIS Preferred Alternative, Alternative 4, as the Section 1 preferred route alignment alternative. The Preferred Alternative, is comprised of Segments 1-S1, 1-C3 and 1-N2 with proposed diamond interchanges at State Roads (SR) 68, SR168 and SR64, Interchange Option 2 for the I-64/I-164/I-69 interchange and local access roads.

U.S. EPA reviewed the I-69 Tier 2 Draft EIS (DEIS) for Section 1 and rated it “Lack of Objections” in our letter dated February 20, 2007. Our rating, in part, was based on the minimal differences between the alternatives in the type and level of impacts to resources. The FEIS continues to identify that the majority of direct impacts in Section 1 are to farmland. Direct wetland impacts are still predicted to be less than 2 acres. The predicted forest impacts have been reduced to 27 acres in the FEIS from 33 acres identified in the DEIS. The list of substantive changes between the DEIS and the FEIS provided at the beginning of each FEIS chapter was very helpful in expediting our FEIS review. We recommend this method be used in all future I-69 Tier 2 EISs.

The U.S. EPA DEIS comment letter advised that the Section 1 EIS would benefit from additional discussion, clarification, and correction in the areas of (1) Selection of the Preferred Alternative, (2) Air Quality, (3) Waters of the U.S. / Streams and Wetlands, and (4) Mitigation. We requested specific information be included in the Section 1 Tier 2 FEIS. U.S. EPA recommended that FHWA/INDOT consider our comments and incorporate our recommendations, as appropriate, when developing the Tier 2 DEISs for Sections 2, 3, 4, 5 and 6. In addition, we recommended the direct and indirect impacts associated with the entire 142-mile-long I-69 Indianapolis to Evansville be disclosed in the Tier 2 NEPA documentation and the Tier 2 studies identify the mitigation measures that will be undertaken to compensate for these impacts. We advised that a clear method be designed and identified now, before the first Tier 2 Record of Decision (ROD), in order to keep track of these impacts and mitigation measures.

The information in the FEIS is generally responsive to all our specific recommendations. For example, the FEIS provides additional discussion on how the Preferred Alternative was selected, and additional clarification regarding PM_{2.5} and the Carbon Monoxide Hotspot Analysis, and includes a qualitative Mobile Source Air Toxics (MSAT) analysis. We commend INDOT for committing to 3:1 upland forest mitigation, and 4:1 forested wetland mitigation and for incorporating three wildlife crossings during Section 1 final design. In addition, the FEIS identifies that FHWA and INDOT will consider our Tier 2 Section 1 EIS comments and recommendations when preparing the Tier 2 EISs for Sections 2, 3, 4, 5, and 6 of the I-69 Evansville to Indianapolis project.

Impact and Mitigation Tracking: The FEIS also identifies that FHWA/INDOT will provide a tally of direct impacts associated with the entire 142-mile-long I-69 Indianapolis to Evansville alignment identified in each section’s Tier 2 studies. Appendix S of the Section 1 Tier 2 EIS provides the running tally information to date for a limited number of impact categories. We note that stream impacts and karst features impacts are not currently included in the tracking tables in Appendix S. We request FHWA and INDOT include stream impacts and karst features impacts as part of the running tally for all Tier 2 sections.

The FEIS identifies that an overall impacts/permitting/tracking method is being developed in consultation with permitting agencies and U.S. EPA. The FEIS also states

that INDOT will coordinate with agencies to identify agency-specific information to be included in the database for tracking and will provide to permitting agencies and U.S. EPA a tracking summary on an annual basis. The summary will identify the permitting and mitigation commitments and describe the status of the activities to date associated with each commitment. We continue to recommend the Section 1 Tier 2 ROD provide the detailed mitigation tracking method developed in consultation with U.S. EPA and the other agencies. If this is not possible, then the ROD should identify when the specifics of the tracking method will be developed and disclosed.

I-69 Community Planning [Program]: We appreciate the update on the status of the I-69 Community Planning [Program]. However, we note that development of this mitigation commitment from the March 2004, I-69 Tier 1 ROD has taken substantial time to develop. The FEIS states that planning grant applications were only made available to eligible communities in late August 2007. The FEIS identifies that the deadline for grant applications as November 2, 2007. Consequently, there is no information in the Section 1 Tier 2 FEIS that identifies which, if any, communities in the Section 1 study area will definitely participate in this planning program. There is no information in the Tier 2 Section 1 FEIS concerning what, if any, measures the communities plan to implement (e.g., land use plans, zoning, regulations) in order to protect and enhance resources of concern in their local community and/or county nor how or when they plan to implement them. This type of information would have better informed the indirect/cumulative impacts analysis and proposed mitigation for Section 1.

We recommend that the next five Tier 2 EISs provide updates on community participation in the planning program. The updates should include but not be limited to the identification of all participating communities and disclose what each participating community is doing with their planning grant money. I-69 Tier 2 EISs should also disclose whether or not and how a community's proposal provides tangible protection and/or enhancement of the natural resources within that community. This information should be used to inform the indirect/cumulative impacts analysis and proposed mitigation identified in the Tier 2 EIS for each Tier 2 Section.

We offer the following comments for your consideration in preparing information for required permits for Section 1 and/or for inclusion in future Tier 2 EISs for Sections 2, 3, 4, 5 and 6.

Impaired Water Bodies: We requested a map be added to the FEIS that would help the reader's understanding of the proposed project and its impact on downstream resources and where they are located in the stream network. The map in FEIS Figure 4.3-7 and the table of the causes of impairment (Table 4.3) are important additions to the document. What is still missing is the information that would allow the reader to identify/cross reference between map segments and table segments. The map is helpful in building the argument that these receptor areas are far enough away from the proposed project area to not be an active issue.

Highway runoff control: Table 5.19-13 addresses acute toxicity criteria and pollutant concentrations derived from rural highways. This presents a limited “worse case” approach to looking at water quality criteria values for highway runoff and its contributing to a decline in water quality. Again, the distance in this specific impairment situation lessens the issue of contribution to existing stream impairments.

Maintenance of overall water quality in local streams and wetlands is always an issue, however. We encourage FHWA and INDOT to work with IDEM on post-construction stormwater management relevant to a high capacity freeway, so that runoff is handled well.

Stream Mitigation: Progress has been made planning new channels as part of a multi-element compensatory mitigation plan. We wish to see the proposed mitigation plan again, when it moves beyond the conceptual stage.

InWRAP: INDOT needs to share information and insights on the use of the Indiana Wetland Rapid Assessment Procedure (InWRAP) for this proposal with the agencies working in Indiana, as well as Taylor University. This would include IDEM, IDNR, USFWS and U.S. EPA. Again this is something that can occur outside the schedule for any EIS document.

Tier 1 CWA Section 404 Least Environmentally Damaging Practicable Alternative (LEDPA): Thank you for clarifying in the FEIS that it is the Corps that must make the LEDPA determination for Clean Water Act Section 404 permitting purposes for the I-69 project.

Tier 2 Section 1, Selection of NEPA Preferred Alternative (Chapter 6, Section 6.3) and CWA Section 404 permitting: Although the differences between the various EIS alternatives’ impacts are similar, there is still a half acre wetland spread between alternatives, which will need to be considered in its regulatory context. The explanation of trade-offs of environmental impacts between alternatives has been better explained in the FEIS.

Potential Wetland Compensatory Mitigation Sites: Progress has been made on the conceptual mitigation plan, which endeavors to meet multiple mitigation objectives at the same site, including for 404 permitting purposes. It is located near the proposed corridor area. This is a reasonable start to a mitigation project, but we see the need for some basic technical clarification for the wetlands portion of the project. “Developing” wetlands is a vague term. We offer some of the questions that will need to be answered in order to develop and implement an adequate mitigation project.

- Does INDOT propose to restore wetlands, where they have previously existed, in the farmed areas?

- How will this occur, especially how will the hydrology be brought back and maintained over the years?
- The proposed wetland ends in a straight line along the eastern property line—what impacts will it have on neighboring property and vice versa, especially should it become developed or farmed?
- Has a check on farmed wetland status or an on-site delineation occurred, since National Wetlands Inventory maps can present inaccuracies due to age or to the limitations of aerial photography in wooded areas?

Much work remains for planning and monitoring the mitigation project.

Potential Hazards to Compensatory Mitigation Sites: We appreciate that issues concerning drainage maintenance and mineral rights are being worked out, since they are a key to sustaining the success of the project. We note that the proposed wetland mitigation area directly abuts additional privately-held property. The quality and success of all of the mitigation areas will depend on adequate buffers between those areas and properties not held in a perpetual conservation easement.

Thank you for the opportunity to comment. If you have any questions about U.S. EPA's comments, please contact Virginia Laszewski at 312-886-7501 or email her at laszewski.virginia@epa.gov. Please send us a copy of the I-69 Tier 2 Section 1 ROD when it is available.

Sincerely,

/S/

Kenneth A. Westlake, Supervisor
NEPA Implementation
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